

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re:

Case No.03-11967 DHW
Chapter 7

JERRY J. CREEL and
MARTHA R. CREEL,

Debtors.

**ORDER APPROVING IN PART
APPLICATION FOR COMPENSATION**

On December 3, 2003 the trustee in this chapter 7 case filed an application to employ Cameron A. Metcalf as attorney for the estate pursuant to 11 U.S.C. § 327(e). Trustee sought assistance of counsel to pursue recovery of property allegedly due the debtor, Jerry J. Creel, from the decedent estates of Terry and Alice Creel.

On December 5, 2003 the bankruptcy administrator filed a response to trustee's application recommending its approval. On January 15, 2004 an order entered approving trustee's application to employ Metcalf. Within the order approving the employment, the court noted that although the trustee proposed to compensate counsel on a one-third contingency fee basis plus reasonable expenses, the court reserved the right to fix reasonable compensation following counsel's application.

On August 9, 2005 Cameron A. Metcalf filed an application for the allowance of his fee. The bankruptcy administrator, again, filed a response recommending that the application be approved.¹ The matter was set for hearing on September 21, 2005 and continued to September

¹The administrator notes that the attorney's calculation of the one-third contingency is in error. The application bases the one-third contingency on a recovery of \$115,000 and seeks compensation of \$38,833.05. The administrator points out that one-third of \$115,000 is 38,333.05.

26, 2005. Metcalf and the trustee were the only persons appearing at the hearing, and no objections to the application were filed.

Nevertheless, the application gives the court cause for concern. On March 15, 2005 the trustee gave notice (Doc. 71) to all parties in interest of his intent to sell the estate's interest in the two decedent estates for \$20,000. Metcalf recommended this sale to the trustee and was apparently willing to accept as his fee one-third of that amount. However, on April 4, 2005 an interested party filed an objection (Doc. 72) to trustee's proposed sale. Thereafter, on April 29, 2005 trustee filed a second notice of sale (Doc. 76). Therein, trustee gave notice that the estates' interest in the two decedent estates would be sold at auction on May 23, 2005. Ultimately, these interests were sold at auction for \$115,000.

It appears to the court that the difference between the original offer to sell of \$20,000 and the ultimate sales price of \$115,000 was in no way attributable to the efforts of trustee's counsel. Under these circumstances, counsel's fee should not be awarded on the basis of the final sales price.

11 U.S.C. § 330 authorizes this court to award "reasonable compensation" to an attorney employed by the estate under 11 U.S.C. § 327. The lodestar method of calculating a reasonable attorney's fee is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley et al., v. Eckerhart et al.*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). "[T]he starting point in any determination for an objective estimate of the value of a lawyer's services is to multiply hours reasonably expended by a reasonable hourly rate." *Norman v. Hus. Auth. Of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). Unfortunately, the lodestar method is not available to the court in this case because Metcalf did not maintain contemporaneous time records of services rendered in his representation of the bankruptcy estate.

Having found that a fee based upon the total sales price is

inappropriate and that the lodestar method is unavailable, the court must, nevertheless, fix a reasonable fee in this case. It is undisputed that Metcalf's services were of benefit to the estate and that those services encompassed relatively complicated issues in the State court. Taking these factors into account, the court concludes that a reasonable attorney's fee is \$19,166.53. That amount represents one-half of the requested fee. Accordingly, it is

ORDERED that Cameron A. Metcalf's application for the allowance of fees and expenses is APPROVED in part. Fees of \$19,166.53 are hereby APPROVED.

Done this the 4th day of October, 2005.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Cameron A. Metcalf, attorney for trustee
Daniel G. Hamm, trustee
Teresa R. Jacobs, bankruptcy administrator